A

MOHD IMRAN KHAN

v.

STATE GOVERNMENT (NCT OF DELHI)

B

SUPREME COURT, INDIA
(2011) 10 SUPREME COURT CASES 192
P SATHASIVAM J
DR BS CHAUHAN J
[CRIMINAL APPEALS NO: 1516 OF 2010†
C WITH NO. 1517 OF 2010
10 OCTOBER 2011

[CRIMINAL LAW] *Penal Code, 1860 - Section 376 - Rape of minor - Conviction confirmed - Defence of majority of prosecutrix and consent,*
D *rejected - Appellant contended that prosecutrix was over 16 years of age and it was a case of consent - Prosecutrix had given full version of incident - Accused persons showed her a knife and told her in case she tried to run away or raise noise, they would kill her - Registration of birth certificate clearly reveals that prosecutrix was less than 16 years on*
E *date of incident - She could not raise hue and cry as she was totally in a position of shock - All the prosecution witnesses have faced grilling cross-examination but nothing could be elicited to discredit any part of their evidence - Held, trial court rightly came to conclusion that there was no reason to disbelieve prosecutrix, as no self respecting girl would level a*
F *false charge of rape against anyone by staking her own honour - Evidence of rape stood fully corroborated by medical evidence - Appeals dismissed*

State of Punjab v. Gurmit Singh (1996) 2 SCC 384 : 1996 SCC (Cri) 316

G *Wahid Khan v. State of M.P.* (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208, followed

Mohd. Imran Khan v. State, Criminal Appeal No. 311 of 1999 order dated 8-12-2009 (Del), affirmed

Mussauddin Ahmed v. State of Assam (2009) 14 SCC 541 : (2010) 1 SCC (Cri) 1445

H *Alamelu v. State* (2011) 2 SCC 385 : (2011) 1 SCC (Cri) 688, distinguished on facts

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† From the Judgment and Order dated 8 December 2009 of the High
I Court of Delhi in Crl. A. No. 311 of 1999.

[CRIMINAL LAW] *Penal Code, 1860 - S. 376 - Rape of minor - Appreciation of evidence - Sole testimony of prosecutrix - Credibility - Corroboration - Not ordinarily necessary - Rape is not merely a physical assault - Rapist degrades very soul of helpless female - Testimony of prosecutrix must be appreciated in background of entire case - If totality of circumstances disclose that prosecutrix does not have a strong motive to falsely implicate accused, court should ordinarily have no hesitation in accepting her evidence - Statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration - Court may convict accused on sole testimony of prosecutrix - Evidence Act, 1872, ss. 118 and 114 Ill. (b) (Paras 22 to 24)*

Penal Code, 1860 - Section 376 - Treatment of prosecutrix - Duty of court - Principles reiterated - Judge/Presiding Judge/Court - Role of in rape cases

Held:

The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. (Para 23)

It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Evidence Act, 1872 nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured witness in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. (Para 22)

A *State of Maharashtra v. Chandraprakash Kewalchand Jain* (1990) 1 SCC 550 : 1990 SCC (Cri) 210
State of U.P. v. Pappu (2005) 3 SCC 594 : 2005 SCC (Cri) 780;
Vijay v. State of M.P. (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639, followed

B

[CRIMINAL LAW] *Penal Code, 1860 - Section 376 - Rape of minor - Age of prosecutrix - Determination of - Registration certificate/ Radiologist's report - Evidentiary value - Registration of birth certificate reveals prosecutrix was less than 16 years of age on date of incident -*
C *Radiologist's report revealed that age of prosecutrix was 16 to 17 years - Defence also produced certificate from Hospital - IO in order to aid appellant-accused had made a statement that certificate on record did not belong to prosecutrix - Registration of birth certificate duly proved by Medical Record Officer and CMO, NDMC and it was explained that*
D *birth certificate produced by defence was of a different female child - Documents have thoroughly been examined by courts below - No reason to examine issue further - Radiologist's report cannot predict exact date of birth - Margin of error in age ascertained by radiological examination is two years on either side - Original record produced before court - Held,*
E *prosecutrix was less than 16 years of age on date of incident - Demographics and Demography - Registration of Births and Deaths Act, 1969 - Section 17 - Age - Evidence Act, 1872, section 35 (Paras 19 to 21)*

F *Jaya Mala v. Govt. of J & K*, (1982) 2 SCC 538 : 1982 SCC (Cri) 502
Ram Suresh Singh v. Prabhat Singh (2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194
State of U.P. v. Chhotey Lal, (2011) 2 SCC 550 : (2011) 2 SCC (Cri) 674, followed

G

[CRIMINAL PROCEDURE] *Criminal Trial - Investigation - Defective or illegal investigation - Obligation to accept statement of IO, if any - IO made an attempt to help appellant-accused - In examination-in-chief he deposed that birth certificate was genuine - In cross-*
H *examination he deposed that "birth certificate of prosecutrix did not relate to prosecutrix" - IO was not declared hostile - Held, in view of birth certificate available on record, and accepted as genuine, this part of statement of IO cannot be believed - Criminal justice should not be made a casualty for wrongs committed by investigating officers - Investigating*
I *officer is supposed to investigate an offence avoiding any kind of mischief*

or harassment to either party - He has to be fair and conscious so as to rule out any possibility of bias or impartial conduct - Criminal Procedure Code, 1973 - Sections 157 and 156 - Duties of IO - Criminal Trial - Witnesses - Police officials/personnel/IO as witnesses (Paras 27 to 31)

Held:

The investigation into a criminal offence must be free from all objectionable features or infirmities which may legitimately lead to a grievance to either of the parties that the investigation was unfair or had been carried out with an ulterior motive which had an adverse impact on the case of either of the parties. The investigating officer is supposed to investigate an offence avoiding any kind of mischief or harassment to either of the party. He has to be fair and conscious so as to rule out any possibility of bias or impartial conduct so that any kind of suspicion to his conduct may be dispelled and the ethical conduct is absolutely essential for investigative professionalism. (Para 31)

State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715 : 2000 SCC (Cri) 61

Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774 : 1974 SCC (Cri) 250

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192

Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336, relied on

Javed Masood v. State of Rajasthan, (2010) 3 SCC 538 : (2010) 2 SCC (Cri) 1176, referred to

[CRIMINAL LAW] *Penal Code, 1860 - Ss. 376 and 366 - Rape of minor - Reduction of sentence - No further reduction warranted - Incident took place in 1989 - Appeal before High Court was pending for more than 10 years - Prosecutrix had willingly accompanied appellants to Meerut and stayed with them in hotel - She was more than 15 years of age - Appellants were young boys - High Court after taking into consideration all circumstances reduced sentence to 5 years which was less than minimum prescribed sentence - Held, High Court itself has awarded sentence less than minimum sentence prescribed - No case to reduce sentence further in a proved case of rape of a minor (Para 33)*

Baldev Singh v. State of Punjab, (2011) 13 SCC 705, referred to

Appeals dismissed J-D/48792/CR

Advocates who appeared in this case:

P.P. Malhotra, Additional Solicitor General, Amarendera Sharan, Senior Advocate (Abhay Kumar, Sujeet Kr. Murty, Somesh Jha, S. Islam, Anis Ahmed, Balraj Dewan, P.K. Dey, Ms Ranjana Narayan and Ms Anil Katiyar, Advocates) for the appearing parties

Chronological list of cases cited:

Baldev Singh v. State of Punjab (2011) 13 SCC 705

State of U.P. v. Chhotey Lal (2011) 2 SCC 550 : (2011) 2 SCC (Cri) 674

Alamelu v. State (2011) 2 SCC 385 : (2011) 1 SCC (Cri) 688

Babubhai v. State of Gujarat (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336

Vijay v. State of M.P. (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639

Javed Masood v. State of Rajasthan (2010) 3 SCC 538 : (2010) 2 SCC (Cri) 1176

Wahid Khan v. State of M.P. (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208

Mussauddin Ahmed v. State of Assam (2009) 14 SCC 541 : (2010) 1 SCC (Cri) 1445

Ram Suresh Singh v. Prabhat Singh (2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194

Mohd. Imran Khan v. State Criminal Appeal No. 311 of 1999 order dated 8-12-2009 (Del)

State of U.P. v. Pappu (2005) 3 SCC 594 : 2005 SCC (Cri) 780

State of Karnataka v. K. Yarappa Reddy (1999) 8 SCC 715 : 2000 SCC (Cri) 61

State of Punjab v. Gurmit Singh (1996) 2 SCC 384 : 1996 SCC (Cri) 316

State of Bihar v. P.P. Sharma 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192

State of Maharashtra v. Chandraprakash Kewalchand Jain (1990) 1 SCC 550 : 1990 SCC (Cri) 210

Jaya Mala v. Govt. of J&K (1982) 2 SCC 538 : 1982 SCC (Cri) 502

Jamuna Chaudhary v. State of Bihar (1974) 3 SCC 774 : 1974 SCC (Cri) 250

JUDGMENT

Dr Chauhan J:

[1] Both these criminal appeals have been preferred against the common impugned judgment and order dated 8 December 2009 of the High Court of Delhi passed in *Mohd. Imran Khan v. State*[1], by which the High Court has affirmed the conviction of the appellants under s. 376 of the Penal Code, 1860 (hereinafter called "IPC"), however, set aside their conviction under Sections 366/34 IPC and further reduced the sentence from 7 years' RI to 5 years' RI with a fine of Rs 10,000 each and in default to undergo further punishment for 3 months.

[2] The facts and circumstances giving rise to these appeals are unfolded by the statement of Shri Prabhu Dass (father of the prosecutrix, Monika) dated 28 November 1989 made before Police Station Vinay Nagar, New Delhi to the effect that his daughter Monika, aged about 15 years, studying in Standard 9 in Green Field School, Safdarjung Enclave, New Delhi had left her house on 24 November 1989 for going to school. She informed through telephone that she would stay in the house of her friend Amita for the night. On 25 November 1989 at about 8.30am Monika telephoned her cousin Satish Anand that she was going to Pragati Maidan along with her school friends and asked him to reach there so that she would come back with him. Monika asked Satish Anand to meet her at Ahmed Food Restaurant, U.P. Pavilion, where Mohd. Imran Khan and Jamal Ahmed (the appellants) used to work. Satish Anand went to Pragati Maidan at the appointed place, but he could neither meet Monika nor either of the appellants, but he came to know that Monika was roaming inside Pragati Maidan along with the appellants. As she did not come back till evening, the complainant Prabhu Dass went to Pragati Maidan on 26 November 1989 and on enquiry he came to know that Monika was seen roaming with the appellants. The appellants were known to Monika as Prabhu Dass, complainant was having a stall of readymade garments at Shop No. 11 in Anarkali Bazar, Pragati Maidan in front of the food stall where the appellants were working. The complainant's wife Devki and daughter Monika used to come to work there also. The complainant searched for his daughter at many places but could not find her.

[3] On the basis of his statement, a case under Section 363 IPC was registered and investigation ensued. It was during the investigation that Monika, prosecutrix was recovered. The appellant-accused Mohd. Imran Khan and Jamal Ahmed were also arrested. Offences under Sections 366 and 376 IPC were added. Monika was examined under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") on the basis of which the appellant-accused were arrested. After having further investigation, offences punishable under Sections 342/506 IPC were also added.

[4] Monika, the prosecutrix was medically examined to determine her age and to find out the possibility of commission of rape. The appellants were also examined medically. After conclusion of the investigation, the matter was committed to the Sessions Court and trial commenced. The prosecution examined as many as 16 witnesses in support of its case. The defence examined four witnesses. Mohd. Imran Khan, first appellant also examined himself under Section 315 CrPC. After conclusion of the trial, the trial court *vide* judgment and orders dated 29 May 1999 and 31 May 1999 convicted the appellants under Section 366 IPC read with Section 34 and sentenced them to undergo RI for 4 years and a fine of Rs 2000 each. In default of payment of fine, they would undergo SI for two months. Both the appellants were further sentenced under Section 376 IPC to RI for 7 years and a fine of Rs 3000 each. In default of payment of fine, they would undergo SI for 3 months. However, both the sentences were directed to run concurrently.

[5] Being aggrieved, both the appellants preferred separate Criminal Appeals Nos. 311 and 312 of 1999 which have been disposed of by the common impugned judgment and order dated 8 December 20091 by which the High Court acquitted both the appellants of the charges under Sections 366/34 IPC, but maintained their conviction under Section 376 IPC. However, the sentence under Section 376 IPC was reduced from 7 years to 5 years each and to pay a fine of Rs 10,000 each failing which to undergo SI for 3 months. Hence, these appeals.

[6] Shri Amarendera Sharan, learned Senior Counsel for the appellant Jamal Ahmed in Criminal Appeal No. 1517 of 2010 has submitted that the prosecutrix Monika was over and above 16 years of age. The investigating officer deposed in the court that the birth certificate produced in the court did not relate to her. The prosecution did not cross-examine him after declaring hostile. In such an eventuality the appellant is entitled for the benefit of his statement. The appellant Jamal Ahmed had no physical connection with the prosecutrix. She had an affair with Mohd. Imran Khan and had gone with him voluntarily. She had been taken from Delhi to Meerut by bus. She met with an advocate for planning her marriage with Mohd. Imran Khan. She stayed in the hotel. Thus, she had ample opportunity to raise hue and cry

or inform somebody at some place that she had been subjected to some threat or coercion. The courts below erred in placing reliance on her statement.

[7] Shri Anis Ahmed, learned counsel appearing for another appellant in Criminal Appeal No. 1516 of 2010 has also assailed the impugned judgment on similar grounds.

[8] Per contra, Shri P.P. Malhotra, learned ASG appearing for the State of Delhi has opposed the appeals contending that Monika, prosecutrix was below 16 years of age on the date of incident. She remained under persistent threats from the appellants. Therefore, she could not raise hue and cry. The concurrent finding of facts regarding rape by both the appellants does not warrant any interference. The appeals lack merit and are liable to be dismissed.

[9] We have considered the rival submissions made by the learned counsel for the parties and perused the record.

[10] The trial court has meticulously scrutinised and appreciated the evidence of the prosecution as well as of defence. Shri Prabhu Dass, father of the prosecutrix died on 10 November 1995 during the trial before his statement could be recorded. Som Wati, Lady Constable (PW1) deposed that she was in the team which recovered the prosecutrix on 29 November 1989 and taken her for medical examination. She has also recovered the underwear of the prosecutrix which was handed over to the IO.

[11] Dr. Reeta Rastogi (PW2) proved the MLC, Ext. PW-2/A of the prosecutrix and deposed that the same was prepared by her according to which there was no sign of external injury. The hymen of the prosecutrix was inflamed and there was slight bleeding. Her vagina admitted two fingers tightly. The prosecutrix was not habitual of intercourse but there was evidence of intercourse. This witness was not cross-examined by the defence as to whether the evidence of intercourse was recent one or not.

[12] Monika, the prosecutrix (PW3) had given full version of the incident as to how she had been picked up by the appellants from Pragati Maidan. She knew both the accused as they had been working in the stall near the stall of her father. When the prosecutrix was waiting for her cousin, the accused persons

showed her a knife and told her that in case she tried to run away or raise noise, they would kill her. Both the accused persons forcibly took her to ISBT in a three-wheeler and from there to Meerut by bus. The accused kept their respective knives on the back of the prosecutrix in such a manner that neither the passengers nor the bus conductor could notice their activity. She was taken to Hotel Ajanta in Meerut where the appellant Jamal Ahmed made the entry in the hotel register and took her to Room No. 101. At the time of making entry in the hotel register by accused Jamal Ahmed, accused Mohd. Imran Khan stayed with the prosecutrix throughout. Both the accused persons committed rape upon her in that room. Next day in the morning she was taken by the accused persons to the house of the sister of one of them and from there she was brought to Delhi to the house of elder brother of appellant Jamal Ahmed. Both the accused persons committed rape upon her in that house. They had put their knives on her back in such a manner that other persons could not notice them. She could not raise hue and cry while coming from Meerut to Delhi as she was totally in a position of shock and the appellant-accused threatened to kill her in case she raised her voice or tries to run away. On 27 November 1989 she had been locked inside the house as the appellants had gone away and after coming back in the evening she was raped by both of them. On 28 November 1989 both the appellants left the house and returned in the evening along with elder brother and brother-in-law of accused Imran. These two persons had taken the prosecutrix to a flat behind G.B. Pant Hospital where she found both the appellants present. After some time, police recovered her from that place and she was sent for medical examination. Her statement was recorded under Section 164 CrPC on 29 November 1989.

[13] Shri Babu Lal (PW11), the then Metropolitan Magistrate, proved the statement of the prosecutrix recorded under Section 164 CrPC. Other witnesses also supported the case of the prosecution.

[14] Both the appellants denied their involvement while their statements under Section 313 CrPC were recorded. Some defence witnesses were examined, however, relevant witness had been appellant Imran Khan who has examined himself as DW5 under Section 315 CrPC. According to him Monika, the prosecutrix met

him on 25 November 1989 at 3pm at his restaurant and told him that her mother had turned her out so she would not go to her house and if he refused to keep her she would die. It was on the insistence of the prosecutrix that he along with another appellant and the prosecutrix went to Meerut to consult Shri Mustafa, Advocate who was known to other appellant, however, the lawyer told her to bring the birth certificate, etc. as it was to be produced in the court for getting married and the court would issue one month's notice.

[15] All the prosecution witnesses have faced grilling cross-examination but nothing could be elicited to discredit any part of their evidence. This part of the prosecution has been accepted by both the courts and we do not see any cogent reason to interfere with the same.

[16] The learned counsel for both the parties have emphasised on the question as to whether the conduct of the prosecutrix had been such that the appellants could not be held responsible as she had voluntarily gone with them to Meerut and, in spite of the fact that she had ample opportunity to raise hue and cry or inform any person, she did not do so. It is submitted on behalf of the appellants that it was a case of consent as the prosecutrix had voluntarily accompanied the appellants to Meerut. In order to buttress his argument, Shri Amarendera Sharan, learned Senior Counsel, placed reliance upon the judgments of this Court in *Mussauddin Ahmed v. State of Assam*[2] and *Alamelu v. State*[3], wherein after appreciating the evidence on record, the Court held that the prosecutrix had been a willing partner in the entire episode. The conviction accorded under Section 376 IPC by the courts below has been set aside by this Court in similar circumstances.

[17] In our considered opinion, such arguments may be relevant in case we reach the conclusion that the findings of fact recorded by the courts below on the issue of age of the prosecutrix and commission of rape could not be factually correct and were liable to be set aside.

[18] In view of the fact that the High Court has acquitted the appellants for the offences under Sections 366/34 IPC the issue of kidnapping is not required to be considered further.

A **Age**

[19] Both the courts below have laboured hard to find out the age of the prosecutrix for the reason that the defence produced certificate from Safdarjung Hospital, New Delhi to create confusion and the IO in order to help the appellants had made a statement that the certificate on record did not belong to the prosecutrix. The medical report of the radiologist issued by Ram Manohar Lohia Hospital, New Delhi revealed that the age of the prosecutrix was between 16 and 17 years. The birth certificate issued under Section 17 of the Registration of Births and Deaths Act, 1969 reveals that a female child was born on 2-9-1974 from the wedlock of Prabhu Dass and Devki, residents of Sector 12/69, R.K. Puram, New Delhi and its registration number had been 4840. It also reveals that number of live children including this child had been two. However, this certificate has been duly proved by Vijay Kumar Harnal, Medical Record Officer, Safdarjung Hospital, New Delhi (PW9), who explained that one female child was born in Safdarjung Hospital at 7.15am on 2 September 1974. Her mother's name was Devki, wife of Prabhu Dass and her address was R.K. Puram, New Delhi. He also explained that the other birth certificate produced by the defence according to which a female child was born on 12 September 1971 was of a different female child who was born to one Devi Rani, wife of Prabhu Dayal, residents of Kotla Mubarakpur and thus, it did not belong to Monika, prosecutrix. Similar evidence had been given by Dr. R.K. Sharma, CMO, NDMC, Delhi (PW7). According to him, the female child was born with Registration No. 4840 on 2 September 1974 and he further explained that the name of the parents and address of another female child born on 27 September 1971 bearing different Registration No. 4502 had been totally different ie, Prabhu Dayal and Devi Rani, residents of Kotla Mubarakpur. The number of living children with that family is also different from that of the prosecutrix. These documents have thoroughly been examined by the courts below and we do not see any cogent reason to examine the issue further.

[20] The medical report and the deposition of the radiologist cannot predict the exact date of birth, rather it gives an idea with a long margin of 1 to 2 years on either side. In *Jaya Mala v. Govt. of J&K*[4], this Court held: (SCC p. 541, para 9)

> 9. ... However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.

(See also *Ram Suresh Singh v. Prabhat Singh*[5] and *State of U.P. v. Chhotey Lal*[6].)

[21] In view of the above as we have seen the original record produced before us, we are of the considered opinion that the prosecutrix was less than 16 years of age on the date of incident.

Evidence Of The Prosecutrix

[22] It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Evidence Act, 1872 (hereinafter called "the Evidence Act"), nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

[23] The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the

helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. (*Vide State of Maharashtra v. Chandraprakash Kewalchand Jain*[7], *State of U.P. v. Pappu*[8] and *Vijay v. State of M.P.*[9])

[24] Thus, the law that emerges on the issue is to the effect that statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

[25] The trial court came to the conclusion that there was no reason to disbelieve the prosecutrix, as no self-respecting girl would level a false charge of rape against anyone by staking her own honour. The evidence of rape stood fully corroborated by the medical evidence. The MLC of the prosecutrix, Ext. PW-2/A was duly supported by Dr. Reeta Rastogi (PW2). This view of the trial court stands fortified by the judgment of this Court in *State of Punjab v. Gurmit Singh*[10], wherein this Court observed that: (SCC p. 395, para 8)

> 8. … the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her.

[26] Similarly, in *Wahid Khan v. State of M.P.*[11], it has been observed as under: (SCC p. 13, para 17)

> 17. It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked at by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracised by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward-looking as the western countries are.

[27] Much reliance has been placed by the learned counsel for the appellants on the judgment of this Court in *Javed Masood v. State of Rajasthan*[12], wherein it had been held that in case the prosecution witness makes a statement and is not declared hostile, he is supposed to speak the truth and his statement is to be believed.

[28] It is in view of this fact in the instant case that Puran Singh, IO (PW15) has deposed in the court that "the birth certificate of the prosecutrix did not relate to the prosecutrix. I did not verify about the birth certificate from the NDMC. I do not remember if at the time of bail application I had submitted that the birth certificate is genuine but does not relate to prosecutrix." Thus, the question does arise as to what extent the court is under an obligation to accept the statement of Puran Singh, IO (PW15) particularly in view of the birth certificate available on the record. In view of our finding in respect of the date of birth we are of the view that Puran Singh, IO (PW15) unfortunately made an attempt to help the appellant accused, though in the examination-in-chief the witness has deposed that the birth certificate providing the date of birth as 2-9-1974 was genuine.

[29] Be that as it may, by now Puran Singh (PW15) might have retired as the incident itself occurred 22 years ago. Therefore, we do not want to say anything further in respect of his conduct.

[30] In *State of Karnataka v. K. Yarappa Reddy*[13] this Court while dealing with a similar issue held: (SCC p. 720, para 19)

> 19. … It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

[31] The investigation into a criminal offence must be free from all objectionable features or infirmities which may legitimately lead to a grievance to either of the parties that the investigation was

A unfair or had been carried out with an ulterior motive which had an adverse impact on the case of either of the parties. The investigating officer is supposed to investigate an offence avoiding any kind of mischief or harassment to either of the party. He has to be fair and conscious so as to rule out any possibility of bias
B or impartial conduct so that any kind of suspicion to his conduct may be dispelled and the ethical conduct is absolutely essential for investigative professionalism. The investigating officer

> is not merely to bolster up a prosecution case with such evidence
C as may enable the court to record a conviction but to bring out the real unvarnished truth.

(Vide *Jamuna Chaudhary v. State of Bihar*[14], SCC p. 780, para 11, *State of Bihar v. P.P. Sharma*[15] and *Babubhai v. State of Gujarat*.[16])

D **[32]** Shri Amarendera Sharan, learned Senior Counsel has placed reliance on the judgment of this court in *Baldev Singh v. State of Punjab*[17], wherein the convicts of gang rape had been sentenced to 10 years' RI and a fine of Rs 1000 each had been imposed and served about more than 3 years' imprisonment and incident had
E been very old, this Court in the facts and circumstances of the case reduced the sentence as undergone, directing the appellants therein to pay a sum of Rs 50,000 of fine to be paid to the victim and prayed for some relief.

F **[33]** The High Court after taking into consideration all the circumstances including that the incident took place in 1989; the appeal before it was pending for more than 10 years; the prosecutrix had willingly accompanied the appellants to Meerut and stayed with them in the hotel; and she was more than 15
G years of age when she eloped with the appellants and the appellants were young boys, reduced the sentence to 5 years which was less than the minimum prescribed sentence for the offence. As the High Court itself has awarded the sentence less than the minimum sentence prescribed for the offence recording
H special reasons, we do not think it to be a fit case to reduce the sentence further in a proved case of rape of a minor.

[34] The appeals lack merit and are, accordingly, dismissed.

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Endnotes:

1. Criminal Appeal No. 311 of 1999 order dated 8-12-2009 (Del).
2. (2009) 14 SCC 541 : (2010) 1 SCC (Cri) 1445.
3. (2011) 2 SCC 385 : (2011) 1 SCC (Cri) 688.
4. (1982) 2 SCC 538 : 1982 SCC (Cri) 502 : AIR 1982 SC 1297.
5. (2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194.
6. (2011) 2 SCC 550 : (2011) 2 SCC (Cri) 674.
7. (1990) 1 SCC 550 : 1990 SCC (Cri) 210 : AIR 1990 SC 658.
8. (2005) 3 SCC 594 : 2005 SCC (Cri) 780 : AIR 2005 SC 1248
9. (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639
10. (1996) 2 SCC 384 : 1996 SCC (Cri) 316 : AIR 1996 SC 1393
11. (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208.
12. (2010) 3 SCC 538 : (2010) 2 SCC (Cri) 1176.
13. (1999) 8 SCC 715 : 2000 SCC (Cri) 61 : AIR 2000 SC 185.
14. (1974) 3 SCC 774 : 1974 SCC (Cri) 250 : AIR 1974 SC 1822.
15. 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260.
16. (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336.
17. (2011) 13 SCC 705 : AIR 2011 SC 1231.